



Members' guide

Working time and the law



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Introduction

Managing time at work is difficult for many Prospect members across every sector. With resources being stretched to the limit in many workplaces, employees are under increasing pressure to do more and more hours.

The growth of an 'all-hours' culture has led to increased working hours and pressures for many members. Many employers abuse the commitment of workers by contacting them out of hours. While the extension of home working has many benefits, it can also be harder to ensure a good work/life balance. Prospect is campaigning for workers to have a right to disconnect. See **Work-life balance and the right to disconnect while working from home** on our website for more details.

This guide provides a summary of the legal issues around working time and explains the statutory limits on working hours. While the focus of this guide is on the law, it is important for members and representatives to recognise

the health and safety implications of long hours and the need to ensure that all workers can maintain a decent work-life balance. The law can only be a starting point and Prospect reps should seek to ensure that there are good policies on working time in their organisation.

This guide gives an overview of members' rights but it is always best to seek expert advice through your Prospect rep or negotiator. Members should note that legal advice and workplace assistance is offered at Prospect's discretion, and will be decided depending on the facts and merits of each case.

The law as stated in this guide applies to members in England, Scotland and Wales. The law is somewhat different in Northern Ireland, the Channel Islands and the Isle of Man. Members in these areas should contact their negotiator for more information.

The guide is up to date as at August 2022.

1. Work-life balance

1.1 It is important that workers are able to strike a balance between their working lives and their family and home lives. There are also other work-life balance issues around disability (**see section 2**), health and safety issues (**section 3**) and time off for training (**section 13**).

The right to disconnect

1.2 Always-on working cultures of checking emails and taking calls away from work have become widespread in many companies and industries. Some people may be happy to work like this, but if expectations are not managed fairly it can pose serious issues for equality and diversity, work-related stress, morale and productivity.

1.3 These issues can be made more acute by a shift towards increased home working. There can be important benefits for many workers from increased flexibility about where they work; but for some it can make it even harder for workers to maintain boundaries between work and the rest of their lives.

1.4 Prospect is encouraging employers to learn from best practice in the UK and overseas, which can mean agreeing fair ground rules with their employees about when they can be expected to take calls, read emails, join online meetings or engage with work in other ways outside their normal contracted hours.

1.5 See the Prospect guide **Right to disconnect – a guide for union activists** for further information.

Family-friendly working practices

1.6 Family-friendly working practices can help to:

- reconcile family and working lives;
- promote equality of opportunity for women;
- enable men to play a full role in the family;
- give employees control over their time and an ability to balance their responsibilities.

1.7 Such policies should cover a broad definition of the family that includes the extended family, those with elderly dependants, lone parents and families with same-sex partners, so that family-friendly policies are flexible enough to cover any worker with caring responsibilities.

1.8 There are many examples of working patterns which can be introduced to enable a more flexible approach to working time. The best policies include a range of options:

Alternative working patterns

- Part-time working
- Job sharing
- Flexitime
- Term-time working
- Homeworking
- Compressed working weeks (eg nine-day fortnight)
- V time (voluntary reduced working time)
- Time off in lieu

Leave for family reasons

- Maternity leave
- Paternity/partner leave
- Adoptive leave
- Parental leave
- Dependency care leave
- Fertility leave
- Career breaks

1.9 Many Prospect members will already work under arrangements that provide for time off in lieu (TOIL). This can be a significant way of achieving flexibility.

1.10 All employees with at least 26 weeks' service have the right to request flexible working under the Flexible Working Regulations (see our **Members' guide to part-time and flexible working** for more detail).

2. Equality and working time

2.1 Good policies on the organisation of working time can have a positive impact on promoting equality and diversity in the workplace. For example, through ensuring that there are policies on work-life balance and that working arrangements do not adversely affect particular groups covered by the Equality Act.

2.2 Under the Equality Act it is unlawful to discriminate against a worker because of a protected characteristic. These characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

2.3 Working time should be organised to ensure that it does not directly or indirectly discriminate on these grounds. For example, restrictions on part-time working are likely to be indirectly discriminatory against women.

2.4 Leave arrangements should be flexible enough to recognise the religious beliefs of workers wherever possible. Refusal by employers to allow leave at appropriate times for religious festivals has been held by the courts to be unlawful discrimination on the grounds of religion or belief.

2.5 Flexible working arrangements should be considered if a disabled person needs adjustments to their working hours in order to overcome a disadvantage. In addition, Prospect argues that all employers should have a policy on disability leave, enabling disabled employees to take time off to adjust to a disability, to ensure appropriate adjustments are in place for their return to work, and for sickness due to a disability to be recorded separately.

2.6 More information on these issues is contained in the following Prospect guides:

- **Members' guide to equality at work**
- **Members' guide to part-time and flexible working**
- **Members' guide to parental and family leave**

3. Health and safety

3.1 The Working Time Directive was introduced in Europe as a measure to promote the health and safety of workers. Prospect welcomed the implementation of the Working Time Regulations in the UK as an important addition to health and safety protection for workers. This guide cannot go into the detailed issues around health and safety and working time – for more information see the Prospect website at www.prospect.org.uk.

3.2 Under the Management of Health & Safety at Work Regulations 1992, employers are required to carry out a risk assessment to identify hazards such as fatigue and methods of work (including its organisation). They must evaluate the extent of the risks involved so that measures can be taken to comply with their general duties under the Health & Safety at Work Act 1974.

3.3 Employers are also required to consult safety representatives about any change which may substantially affect employees' health and safety at work. This could include significant changes to working time arrangements or shift patterns.

Long hours

3.4 In many organisations there is a growing problem of a long hours culture. A high proportion of workers in the UK regularly work more than 10 hours over and above their contracted hours. The problem of long hours working is particularly prevalent for managers and specialists. Many Prospect members work a considerable amount of extra hours, and for most members this work does not attract overtime payment.

3.5 Prospect reps should seek to negotiate the introduction of measures to combat the long hours culture. The following range of measures can be taken.

- A positive statement by the employer against staff working excessive hours.
- Encouraging managers to set a good example by not working excessive hours themselves.
- Not starting meetings late in the afternoon which are likely to extend past normal working hours.
- Discouraging employees from making remarks about the hours worked and leaving times of other people.
- Where there is pressure on staff to work extra hours, the job loading should be reviewed to redistribute work as necessary.

- Time management courses should be available for workers.
- The impact of travelling time and the use of video and teleconferencing facilities should be considered.
- All employees should be encouraged to use all their annual leave entitlements.
- The individual opt-out facilities in the working time regulations should not be used.
- Management should ensure there is adequate cover to replace workers on long-term absences such as maternity leave or long-term sickness.

4. Working time directive and regulations

4.1 Statutory limits have been set on the number of hours workers can do and their legal entitlement to rest periods during the working day and week. These laws were introduced to the UK in 1998 following the European directive on the organisation of working time. The EU law was introduced as a health and safety measure to protect the health of workers, recognising the detrimental effects of working consistently long hours without adequate rest.

4.2 The Working Time Regulations provide a framework of rights. These are:

- A limit of 48 hours on average weekly working (although individuals can opt out in certain circumstances)
- A minimum of 5.6 weeks paid annual leave
- A daily rest period of 11 consecutive hours
- A weekly rest period of 24 hours
- A minimum 20-minute rest period where the working day is longer than six hours
- An average limit of eight hours in each 24-hour period for night workers (with an actual eight-hour limit for night workers whose work involves special hazards or heavy physical or mental strain)
- A health assessment for all night workers

4.3 The separate provisions are covered in detail in the following sections of this guide:

- Government guidance on working time is available at www.gov.uk/browse/employing-people/contracts
- Health and Safety Executive guidance is available at www.hse.gov.uk/contact/faqs/workingtimedirective.htm

Young workers

4.4 There are several differences for young workers under the age of 18. This guide does not deal with these in detail but, briefly, the different provisions for young workers include:

- Working time must not exceed eight hours a day or 40 hours a week
- A daily rest period of 12 hours
- A weekly rest period of 48 hours
- 30 minutes rest break where the working day is more than 4.5 hours
- Night work will only be allowed in limited circumstances

5. Coverage of the regulations

5.1 The Working Time Regulations cover all 'workers', which is a broader definition than employees. Workers include people working under a contract of employment and any others who undertake work personally for someone who is not a client or customer. So, for example, agency and temporary workers are covered, as are freelancers, homeworkers and consultants. It is only the genuinely self employed who are not covered by the regulations.

5.2 The provisions apply equally to part-time workers and to casual or fixed-term contract employees.

Exclusions

5.3 However, many workers are excluded from the provisions and only parts of the regulations apply to many others.

5.4 The following workers are specifically excluded from the scope of the directive and the regulations.

- Domestic workers in private households
- Some workers in the armed forces, police or other civil protection and emergency services
- Workers employed on board sea-going fishing vessels and sea transport workers

- Mobile workers in inland waterways and lake transport

Transport sector

5.5 The main regulations do not apply to the following sectors: air, rail, sea, inland waterway and lake transport. There are separate regulations for these sectors.

5.6 For example, the Road Transport (Working Time) Regulations 2005 require:

- a maximum 48-hour working week on average;
- an absolute limit of 60 hours in any one working week;
- a maximum 10 hours night work in any 24;
- 45 minutes break after four and a half hours driving;
- 30 minutes rest after six hours working (but not driving);
- 45 minutes break after nine hours working (but not driving).

5.7 There are also rules governing civil aviation and merchant shipping workers:

- The Civil Aviation (Working Time) Regulations 2004
- The Merchant Shipping (Hours of Work) Regulations 2002

Armed forces, police and civil protection

5.8 The regulations exclude workers in the armed forces, police and civil protection services 'where characteristics peculiar to certain specified services inevitably conflict with the provisions of these regulations'. Civil protection services include the police, fire brigade, ambulance service, security and intelligence service, customs and immigration officers, the prison service, coastguard and life boat crew and other voluntary rescue services.

Unmeasured working time

5.9 A further group of workers are excluded from the provisions relating to the 48-hour limit, night-working limits and the provisions relating to rest periods and breaks. This exclusion applies to workers whose working time is not measured or predetermined. The regulations give three examples:

- Managing executives or other persons with autonomous decision-taking powers
- Family workers
- Workers officiating at religious ceremonies in churches or religious communities

5.10 Employers in some Prospect areas have sought to argue that the exception for those

with autonomous decision-taking powers should cover a wide range of senior managers. However, Prospect believes this exclusion only applies in exceptional cases at the very top of organisations, for example chief executives or managing directors. It should not be used to exclude other senior managers.

Partial exclusion for other 'special cases'

5.11 There is another extensive list of workers who are excluded from the provisions on rest periods, breaks and night work. They are excluded where there are practical reasons, relating to the nature of the work, that make strict compliance with working time limits difficult to achieve. They are:

- where the place of work is distant from their place of residence or where workers in different places of work are distant from one another;
- where there are security and surveillance activities requiring a permanent presence to protect persons and property;
- where continuity of service or production is required, particularly regarding:
 - services relating to the reception, treatment or care provided by hospitals, residential institutions and prisons
 - dock and airport workers

- press, radio, television and cinematographic production
- postal and telecommunications services
- ambulance, fire and civil protection services
- gas, water and electricity production, transmission and distribution
- household refuse collection and incineration plants
- industries in which work cannot be interrupted on technical grounds
- research and development activities
- agriculture;
- where there is a foreseeable surge of activity, particularly in agriculture, tourism and postal services;
- where there are unusual and unforeseeable circumstances beyond the employer's control;
- where there is an accident or imminent risk of accident.

5.12 However, in all these cases compensatory rest or 'appropriate protection' must be given to the worker (see **section 9** and **section 10** in relation to specific entitlements on night working and rest periods).

5.13 Prospect representatives should consider reaching a collective agreement to define which workers are covered.

6. Definition of working time

6.1 The starting point for pursuing rights under the Working Time Regulations is to define what counts as 'working time'. This is defined as any period:

- during which an employee is working, at the employer's disposal and carrying out their activity or duty;
- during which the employee is receiving relevant training;
- which is to be treated as working time under a relevant agreement.

6.2 Working time covers contractual hours but also any paid or unpaid overtime. Working abroad counts as working time.

6.3 There are likely to be areas of doubt under the definition and representatives may want to seek a collective agreement to clarify working time. The following issues should be covered in any agreement.

- Time on-call: Where the employee is at the employer's premises, waiting for a job, this should normally be working time.
- Lunch breaks: When the employee is at leisure would not be working time, but a working lunch or business lunch would be working time.

- Time travelling to and from work would not normally be working time, but time travelling as part of the job (eg to meetings) would be working time.
- Working at home – should be working time, though this might be limited to where it has been agreed with the employer in advance.
- Official engagements: For example, evening functions may be working time.
- Trade union duties and facility time should count as working time.

On call or standby

6.4 The courts have considered several cases concerning on-call or standby duty. When a worker 'on call' is actually performing the work this will definitely count as working time.

6.5 Other time on-call or standby depends on whether the worker is required to be at the employer's premises, or if away from the workplace, whether there are significant restrictions on the worker's location and speed of response.

6.6 If the worker is required to be at the place of work during on-call hours, even if they are sleeping or relaxing, this will count as working time.

7. Agreements

7.1 There are many areas where the Working Time Regulations allow for 'relevant agreements' to be reached to avoid or extend certain provisions. There are three types of possible agreement:

- Collective agreements
- Workforce agreements
- Relevant agreements

Collective agreements

7.2 Collective agreements are negotiated between the trade union and the employer. In most cases where Prospect is recognised, agreements on working time would be made as collective agreements in the usual way.

7.3 Because there is scope to reach binding agreements on working time issues, Prospect representatives should consider negotiating a specific agreement with the employer to ensure that the regulations are applied in a way to ensure maximum protection for the health and safety of workers and to fit the specific circumstances of the workplace. **See Section 14 for a list of bargaining points.**

Workforce agreements

7.4 The directive states that agreements can be reached through the 'two sides of industry'. In order to cover workplaces which do not have recognised unions, it will be possible to reach agreements under the provisions of the regulations through 'workforce agreements'. Workforce agreements would only apply where the employees' terms and conditions are not governed by a collective agreement, so where the trade union is recognised any agreement should be with the trade union as a collective agreement.

Relevant agreements

7.5 'Relevant agreement' is the phrase used throughout the regulations to cover both collective agreements and workforce agreements. But the phrase also includes other written agreements such as written terms of the contract of employment.

8. The 48-hour week

8.1 Under the Working Time Regulations, workers must not work more than an average 48 hours per week, unless they have agreed to opt out individually. The definition of working time is an important factor here, and it is important to note that the maximum limit on working time does include overtime, both paid and unpaid.

8.2 In most cases, the 48-hour limit is to be assessed as an average within a 17-week reference period. The 17-week reference period will be a rolling period of 17 weeks, unless there is a relevant agreement to adopt successive periods of 17 weeks.

8.3 Where employees are covered by the partial exclusion for special cases in **paragraph 5.11** (largely where the need for continuity of service or production applies) the reference period will automatically be 26 weeks.

8.4 The only other means of extending the reference period is where there is a collective or workforce agreement for 'objective or technical reasons or reasons concerning the organisation of work'. But the reference period may not be extended beyond 52 weeks. Prospect would rarely accept that the reference period should be for any period longer than the 17 or 26 weeks specified in the legislation.

8.5 Where the employee has not been employed for the full reference period the average must be taken throughout the period of employment. For example, if an employee has been employed for 10 weeks, the 48 hours must be averaged over the 10 weeks.

Calculating the number of hours

8.6 The regulations provide a formula for calculating average hours over the reference period. In averaging out the hours any days of statutory annual leave or sick or family leave must be excluded.

8.7 The number of hours is calculated as:

- A + B divided by C, where:
 - A is the total number of hours worked during the reference period
 - B is the total number of hours worked immediately after the reference period, during the number of working days equivalent to the number of 'excluded days' (namely statutory annual, sick, maternity, paternity, adoption or parental leave)
 - C is the number of weeks in the reference period

Individual agreement to opt out

8.8 Individual workers can agree to opt out of the restrictions on the 48-hour week. But this must be entirely voluntary and workers must not be subjected to any detriment for not agreeing to work more than 48 hours.

8.9 For this individual opt out to apply:

- the agreement must be in writing;
- the agreement can be indefinite or specify its duration;
- the employee must be able to bring the agreement to an end with seven days' notice – unless a longer period is specified in the agreement, but this notice period must not exceed three months;
- the employer must maintain up-to-date records of all workers who have opted out.

9. Night work

9.1 Night-time working covers work done during the period between 11pm and 6am.

9.2 A night worker is defined as someone who 'as a normal course' works at least three hours of their daily working time during night time. This will include a person who works such hours on a majority of the days they work. It is also likely to cover people who do regular night work, for example those on a rotating shift pattern.

9.3 There can be a collective or workforce agreement defining night work slightly differently, in which case night time could be any period of not less than seven hours, including the period between midnight and 5am. A night worker could be agreed as someone who is likely to work a certain proportion of their annual working time during night time.

Length of night work

9.4 Night workers should not work more than an average of eight hours in each 24-hour period. The reference period for averaging hours will be 17 weeks; as with the limit on the 48-hour week, the reference period will be a rolling 17-week period, unless successive 17-week periods are agreed under a relevant

agreement. The limits are based on average hours, so for example a 12-hour shift pattern would not necessarily be in breach of the regulations.

9.5 Night workers whose work involves special hazards or heavy physical or mental strain must not actually work more than eight hours in any 24-hour period. The regulations state that this will apply where the work has been identified as such in a collective or workforce agreement, or where it is recognised in a risk assessment by the employer.

Exceptions to the limits

9.6 The night-time limits do not apply to all the workers identified by the special cases exclusions (**see paragraph 5.11**). Also the provisions can be modified or excluded by collective or workforce agreements.

9.7 If workers are excluded from the night-time limits as special cases or by collective or workforce agreement, provision must be made for compensatory rest periods. Exceptionally, if it is not possible to have compensatory rest, the employer must afford the worker 'such protection as may be appropriate in order to safeguard the worker's health and safety'.

Health assessments

9.8 All night workers must be given the opportunity for a free health assessment before they commence night work and at regular intervals while continuing night work. The purpose of the assessment is to see if the worker is fit to undertake the night work.

9.9 Original government guidance stated that as a minimum employers should offer a screening questionnaire for workers to complete. The questionnaire should be compiled with guidance from a health professional and the responses assessed by people trained to interpret the information. However, if the questionnaire throws up any doubt, an individual should be referred to a suitably qualified health care professional or an occupational health service.

9.10 Prospect recommends that assessments should be done on an annual basis. The medical information must be subject to the usual procedures on confidentiality; and the health professional should be required to make a statement on the worker's fitness for night work and not stray into other areas. The medical details should only be released to the employer with the employee's written consent.

9.11 In cases where a night worker is found to be unable to continue with night work the employer must transfer the worker to day work if it is possible to do so.

10. Rest periods and breaks

10.1 The Working Time Regulations set entitlements to rest periods within the working day and daily and weekly rest periods. These entitlements can be modified or excluded by means of a collective or workforce agreement.

Rest breaks

10.2 Under the regulations, workers are entitled to a rest break of at least twenty minutes if their working day is longer than six hours. The worker is entitled to spend the break away from their work station, where they have one.

Daily rest period

10.3 Workers are entitled to a minimum daily rest period of 11 consecutive hours within a 24-hour period. The maximum working day will therefore be 13 hours.

Weekly rest period

10.4 In addition, workers are entitled to an uninterrupted weekly rest period of not less than 24 hours in each seven-day period. But the employer may determine that this should either be two rest periods of 24 hours in each 14-day period, or one uninterrupted rest period of at least 48 hours in a 14-day period.

This means that the worker is entitled to two days rest over a fortnight.

10.5 The weekly rest period is additional to the 11 hours daily rest period, unless there are 'objective or technical reasons or reasons concerning the organisation of work' which justify incorporating all or part of that daily rest into the weekly rest period.

Exceptions

10.6 The rest entitlements need not apply to a shift worker when changing shifts, if they cannot take a rest break in between the end of one shift and the start of the next.

10.7 The wide ranging list of 'special cases' are excluded from these provisions (**see paragraph 5.11**).

10.8 However, where a worker is not covered by the rest period provisions because of these special cases exceptions, or through a collective or workforce agreement, the employer shall, wherever possible, grant equivalent periods of compensatory rest. The compensatory rest should always be within a reasonable time. For example, if the two-day rest period has not been possible during a fortnight, an extra day's rest may be allowed in the following week.

10.9 In exceptional cases the regulations state that if it is not possible for compensatory rest periods to be given, the employer 'shall afford him such protection as may be appropriate in order to safeguard the worker's health and safety'. Prospect advises that this flexibility is not something which should be used on a routine basis.

Pattern of work

10.10 Where the work is monotonous or the work rate is predetermined and the pattern of work puts the health and safety of workers at risk, the employer must ensure that employees have adequate rest breaks. This regulation places a potentially significant duty on the employer to ensure that the way the work is organised does not place undue strain on the workers. Prospect reps may want to deal with this in collective agreements.

11. Annual leave

11.1 The Working Time Regulations provide a statutory right to a minimum of 5.6 weeks' paid annual leave.

11.2 The amount of leave entitlement under the regulations includes bank holidays. The period was increased from four weeks to 5.6 in order to ensure that all workers had four weeks' leave plus the usual eight days public holidays.

11.3 Many Prospect members will have longer holiday entitlements under the terms of their contract of employment that has been negotiated and agreed with the employer. Taking contractual leave counts towards the statutory right. A contract can provide for more than the statutory leave, but not less.

11.4 The right to annual leave starts to accrue as soon as the worker starts employment. During the first year of employment the leave accrues at the rate of 1/12th on the first day of each month. The leave continues to accrue during maternity leave.

11.5 The 'leave year' can be determined in a relevant agreement. So in most workplaces where the leave year is identified in the employee's contract of employment or

staff handbook this will apply. If there is no agreement on the leave year, the year will run from the date the employee starts work for the organisation, or 1 October 1998 if the employee was employed before the regulations came into force.

11.6 The leave entitlement cannot be replaced by a payment in lieu, except where holiday is outstanding when the employment ends.

11.7 Under the regulations, any unused leave at the end of a year cannot be carried forward to the next year and is lost (unless the leave could not be taken due to sickness or where the employer refused to allow any leave – **see 11.12** below). However, if there is a contractual right to carry over a certain amount of leave (for example in a staff handbook or policies) then this will apply.

Holiday pay

11.8 When workers are on holiday they should be paid their full normal pay, including overtime and allowances.

11.9 The rules are complicated so seek advice from your Prospect representative or full-time officer.

Notice of leave

11.10 In most cases the notice period to apply for or to refuse leave should be set out in relevant agreements (eg the staff handbook). But if there is no agreement, the regulations state that the worker must give the employer notice equivalent to twice the amount of leave they wish to take. For example, if the worker wants two days' leave they must give four days' notice. An employer may prevent the leave by giving notice equivalent to the amount of leave applied for.

11.11 The regulations also provide that the employer can choose when the leave should be taken and must give notice equivalent to twice the amount of leave they are proposing. This is rarely done in areas where Prospect is recognised.

Annual leave and sickness

11.12 A number of cases have gone through the courts in recent years to clarify what happens where a worker is unable to take leave because they are sick. In general the worker must be allowed the opportunity to take paid annual leave during an extended period of sickness, and if they are not able to take the leave it must be carried over to the next leave year.

11.13 In the light of the various recent judgments, the following principles should apply in respect of leave entitlement under the regulations.

- Workers continue to accrue statutory annual leave under the working time regulations while they are sick.
- Workers must be allowed to take periods of annual leave while they are sick if they want to do so.
- If workers do take annual leave while sick they must be paid in full for the period of annual leave, even if their sick pay has been reduced or exhausted.
- Claims for non-payment of annual leave can be taken to the employment tribunal as an unlawful deduction of wages.
- Where the worker does not want to take annual leave during their period of sick leave they must be allowed to take that leave later on.
- If a worker falls sick during annual leave and asks for this to be treated as sick leave they must be given the opportunity to take that period of annual leave at a later date.
- Where leave has not been taken due to sickness the employer must allow the leave to be carried forward into the next leave year.

- These principles should apply in the same way in respect of a clash of annual leave and other types of leave, such as maternity or family leave.
- If the employment terminates the worker must be paid in lieu of the outstanding annual leave.

11.14 Prospect representatives should encourage employers to change their sickness and annual leave policies in the light of these principles. Although the law only applies to statutory leave entitlements, representatives should press for the same provisions to apply to additional contractual leave. In practice it can be difficult to distinguish between the two types of leave, so employers are usually prepared to accept this.

12. Enforcement

12.1 There are three separate enforcement strategies in the Working Time Regulations:

- Individual applications to employment tribunals
- Protection against being dismissed or suffering a detriment
- Health and safety enforcement

Employment tribunals

12.2 A worker can make a complaint to an employment tribunal where the employer has:

- refused to allow rest breaks or daily or weekly periods;
- failed to provide compensatory rest;
- refused annual leave entitlements or refused to pay for leave periods.

12.3 The first stage in bringing a tribunal claim is to apply to ACAS for early conciliation. The rules are complex so always seek advice from Prospect. Claims must be started within three months of the act or omission complained of. If the tribunal finds in favour of the worker it must make a declaration and can award compensation. The amount of compensation is not specified, but it will be such as the tribunal considers is 'just and equitable'.

Protection against dismissal or detriment

12.4 Additionally a worker is protected against suffering any detriment for:

- refusing to exceed any limit on working time;
- refusing to sign an opt-out agreement to work more than 48 hours;
- being a workplace representative or a candidate for representative;
- making an allegation in good faith that the employer has contravened the provisions;
- bringing proceedings under the regulations.

12.5 If an employee is dismissed for any of the above reasons it will automatically be unfair dismissal. The usual qualifying length of service (currently two years) for unfair dismissal claims will not apply. Unfair dismissal claims are limited to employees, rather than the broader definition of worker under the regulations. However, workers could argue that being dismissed is a detriment.

Health and safety enforcement

12.6 The regulations make it an offence for the employer not to comply with any of the relevant requirements. These may be enforced by the Health and Safety Executive. HSE is responsible for regulating the maximum weekly working time limit, night work limits and health assessments for night work. An employer found in breach may be liable to a fine and potentially to imprisonment.

13. Time off for training

13.1 Working time arrangements should ideally provide a work-life balance that allows for training or study time for career and personal development.

13.2 Prospect recommends that policies dealing with working time should, in addition to addressing long hours and equality issues, also provide for workers to engage in learning. Many organisations offer flexible working arrangements for undertaking training or provide for breaks from work such as sabbaticals.

13.3 Many of the policies on flexible working (**see section 1**) will also be helpful for workers wanting to undertake study. For example, organisations offering career breaks may provide them for learning purposes as well as to assist with caring responsibilities.

13.4 Where training is required as part of the job, it is important that it is provided at appropriate times to ensure that it does not conflict with family responsibilities or create excessively long working hours.

13.5 There is a statutory right for employees, with 26 or more weeks' continuous service, to request time off for learning, where the training is intended to improve the employee's effectiveness at work and the performance of the employer's business. The employer must give the request 'serious consideration' and any refusal must be for one of the specified reasons. There is no statutory right to be paid for the time off. The right only applies where there are 250 or more employees in the organisation.

14. Checklist of bargaining points

14.1 The Working Time Regulations stress the importance of collective agreements on working time. Many of the flexibilities within the regulations are only available through collective or workforce agreements. There is much scope for trade unions to play an active role in ensuring that the regulations are applied to the benefit of members.

14.2 In negotiating an agreement on working time in response to the regulations there are several key areas to consider:

- ❑ The definition of working time should be as broad as possible
- ❑ The employer should not ask workers to opt out of the 48-hour limit
- ❑ The reference period for calculating weekly hours should not be extended
- ❑ The definition of night time should be clearly defined
- ❑ Format of health assessments for night workers should be agreed
- ❑ Procedures should be in place to enable a move from night to day work where appropriate
- ❑ Exclusions to rest breaks and periods covered by special cases should be limited
- ❑ Entitlement to rest breaks and periods must be well known and employees encouraged to take them
- ❑ Annual leave should accrue during sick leave
- ❑ Holiday pay should reflect the usual full pay (including overtime, allowances etc)
- ❑ Workers should be encouraged to take their full leave
- ❑ There should be a commitment to resist a long hours culture
- ❑ The working time arrangements should be assessed for their impact on equality to ensure that they do not disadvantage particular groups

14.3 In addition to procedures directly relating to the Working Time Regulations, representatives should consider the range of working time issues such as family-friendly policies, part-time working, flexible working, career breaks, sabbaticals, parental leave and reductions in any long hours culture.



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